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February 22, 2019

VIA CM/ECF

Attn: Catherine O'Hagan Wolfe, Clerk of Courts
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Meyer Tool, Inc. vs. National Labor Relations Board
Case No. 18-812, 18-893

Dear Clerk Wolfe:

Pursuant to Federal Rule of Appellate Procedure 28(j), Petitioner-Cross-Respondent Meyer Tool, Inc. submits this letter regarding supplemental authority. In oral argument, the parties discussed the Board's new decision in *Alstate Maintenance, LLC*, 367 NLRB No. 68. We are writing to address *Alstate's* application to the pertinent questions raised by the panel during argument.

The panel asked the extent to which it was to consider objective versus subjective factors in relation to Cannon-El's conduct in HR generalist Deanna Adams's office. The Board in *Alstate* answered this question as follows: "[T]he reason why an employee seeks to initiate, induce, or prepare for group action – whether altruistic or selfish – is irrelevant, and in that sense, the standard is objective. But it is not irrelevant whether the employee does in fact seek to initiate, induce, or prepare for group action. Indeed, that is the standard announced in *Meyers II* itself." *Alstate*, 367 NLRB No. 68 at 4, fn 18. Here, the issue before the panel is whether Cannon-El engaged in protected activity while inside Adams's office, as it was his conduct in Adams's office that led to Adams asking for police assistance and Cannon-El's discharge. Cannon-El admitted, "I only talked about myself" and that he was uninterested in what anyone else had to say.

The Board's decision in *Alstate* also shows that the Board's more extreme "logical outgrowth" theories were always inconsistent with *Meyers Industries*. See, e.g., *Consumers Power Company*, 282 NLRB 130 (1986), (Chairman Dotson dissenting, citing *Meyers* and *Ontario Knife*). They certainly do not survive *Alstate*, which "begins the process of restoring the *Meyers* standard."

Sincerely,
JACKSON LEWIS P.C.

/s/ Daniel G. Rosenthal

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Meyer Tool, Inc.

DGR/dlc

Cc: All Counsel (via CM/ECF)
4852-1543-7961, v. 2